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Attorney for Plaintiff

BENJAMIN KOHN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN KOHN)	CASE NO. 20-4827
<i>Plaintiff,</i>)	
v.)	
THE STATE BAR OF CALIFORNIA,)	VERIFIED EXHIBIT IN
CALIFORNIA COMMITTEE OF BAR)	SUPPORT OF RESPONSE TO
EXAMINERS, and THEIR AGENTS IN)	DEFENDANT’S MOTION TO
THEIR OFFICIAL CAPACITY)	DISMISS COMPLAINT
<i>Defendants.</i>)	
)	
)	

VERIFIED EXHIBIT IN SUPPORT OF RESPONSE TO DEFENDANT’S MOTION TO
DISMISS COMPLAINT

I, Matthew M. Selvagn, certify that the attached Notice of Claim is authentic, true, and correct to the best of my knowledge, under penalty of perjury.

Dated: August 24, 2020

Respectfully Submitted,

/s/ Matthew M. Selvagn

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August 14, 2020

California State Bar
180 Howard Street
San Francisco, CA 94105

Re: Notice of Claims - Benjamin Kohn

Executive Director and General Counsel:

This letter serves as notice of claims against the California State Bar and California Board of Bar Examiners by Benjamin Kohn, residing at 1913 Fordham Way, Mountain View, CA 94040. Notices should be sent to both the Claimant and his attorney.

Please be advised of the following:

I. The date, place, and circumstances giving rise to the claims:

1. Denial of Americans with Disabilities Act testing accommodations for the upcoming October 5th-6th, 2020 California Bar Exam, with denial pending on 8/21/2020;

2. Denial of ADA testing accommodations for the February 2020 California Bar Exam, administered in Burlingame, CA, with denial having occurred on 2/14/2020;

3. Denial of ADA testing accommodations for the February 2019 California Bar Exam, administered in Burlingame, CA, with denial having occurred on 2/15/19;

4. Discriminatory proctoring of the July 2018 California Bar Exam, administered in Burlingame, CA;

The circumstances giving rise to each claim are very similar. In each of the last three exams, Claimant requested disability testing accommodations to take the California Bar Exam, but was denied some of his rightful accommodations. In addition, the Committee of Bar Examiners violated the Claimant's rights under the ADA by not providing detailed written explanations of their denials and by having an inherently prejudicial petition process for requesting accommodations. Finally, on the July 2018 exam, although Claimant was granted his requested accommodations, the test was improperly proctored.

II. A general description of the injury, damage, or loss for which the claimant seeks payment:

Claimant suffered harm by not being allowed to test on a “level playing field” relative to non-disabled applicants to the bar on any of his previous attempts. Due to this tilted playing field, he failed each exam. This violates his rights under the ADA and California’s Unruh Act and is compensable with money damages.

He also suffered compensatory damages in the form of registration fees, bar prep course fees, tutoring costs, transportation costs, and other costs related to each exam. Lastly he has suffered lost wages and opportunities.

III. The name of any public employee causing the loss, if known:

Director of Admission Amy Nunez, regarding the most recent three exams, including the current upcoming exam.

IV. As the claimed amount exceeds \$25,000, no detailed calculation need be provided, however it would be considered an unlimited Civil Case. (Cal. Gov. Code 910).

V. Late claims were excusable under Cal Gov. Code 911.6(b)(1):

Lastly, Mr. Kohn hereby requests leave to file late claims for previous exams, namely July 2018 and February 2019. The claimant’s failure to timely present a claim was caused by a mistake, inadvertence, surprise, or excusable neglect and caused no prejudice to the Bar. (Cal. Gov. Code 911.6(b)(1)).

Claimant had a reasonable belief that federal ADA claims were not covered by the Notice of Claim requirement under the California Tort Claims Act, due to the Supremacy Clause of the US Constitution. Claimant continues to have this reasonable belief under the law and does not concede that any of his claims are covered by the CTCA. This constitutes excusable neglect, or more probably, simply a correct interpretation of Federal law.

Second, Mr. Kohn had already timely appealed each previous denial of testing accommodations within 10 days of each decision, thus putting the Bar on notice of his arguments and claims. His inadvertent and mistaken failure to send a “Notice of Claim” cannot be said to have prejudiced the Bar in any meaningful fashion given their receipt of his timely appeals from each exam.

Third, he wrote in his February 2019 appeal that he was preserving the right to recover damages. This can be considered a Notice of Claim under the statute.

Fourth, on June 15, 2020 Claimant issued a demand letter for all past exams and has filed a complaint in the Federal District Court for the NDCA, docket number 20-4827. All facts and arguments contained in the Complaint are incorporated here as if fully set forth herein.

Sincerely,



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